

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID L. ELMORE, et al.,

Defendants.

CASE NO. C05-810JLR

ORDER

This matter comes before the court on Defendant David Elmore's motion for a temporary restraining order ("TRO") or preliminary injunction. (Dkt. # 2). The court has reviewed Defendant's motion and supporting evidence, and has reviewed the Government's responsive papers. Neither party has requested oral argument. For the reasons stated below, the court DENIES Defendant's motion.

Defendant Elmore has unpaid federal income tax assessments and statutory penalties totaling more than \$500,000. As part of its effort to seize assets to satisfy the unpaid assessments, the Government brought this action to establish its right to reduce those assessments to a judgment against a property in Kent, Washington ("Kent Property"). Although Defendant Elmore is not the owner of record of the Kent Property, the Government seeks to establish that he is the actual owner.

1 The Kent Property, however, is not the subject of Defendant Elmore's motion for a
2 TRO or preliminary injunction. His motion focuses instead on an unimproved parcel of
3 property in Renton, Washington ("Renton Property"). Because Defendant Elmore is
4 clearly the owner of record of the Renton Property, the Government has levied unpaid tax
5 assessments against that property, has seized it, and intends to sell it at auction on May
6 25, 2005, all pursuant to its levy and distraint authorization under 26 U.S.C. § 6331. See
7 United States v. Rodgers, 461 U.S. 677, 682-83 (1983) (noting that administrative levy
8 procedures under § 6331 require no judicial intervention). Defendant Elmore seeks
9 injunctive relief to stop the sale.
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11 Although the Renton Property is not part of this action, the court has considered
12 Defendant Elmore's motion in order to ensure that there is no manifest injustice in the
13 seizure and sale.¹ Having reviewed the Government's response to the motion, the court
14 finds that it is without authority to enjoin the sale of the Renton Property.
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16 To begin with, the court notes that the evidence the Government has provided to
17 the court demonstrates that it has complied with all statutory formalities necessary to
18 seize and sell the Renton Property. It properly issued the underlying tax assessments and
19 provided Defendant Elmore with notice of its intent to levy on the property. See 26
20 U.S.C. § 6330. It has followed procedures for levy and distraint of the property. See 26
21 U.S.C. § 6331. Moreover, the evidence shows that Defendant Elmore has not taken
22 advantage of his opportunity to contest the assessments and the levy on the Renton
23 Property.
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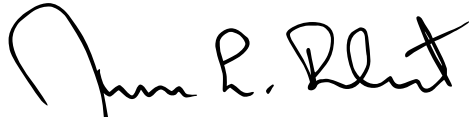
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27 ¹In ordering the Government to respond to Defendant Elmore's motion, the court noted
28 that Defendant Elmore is proceeding pro se in this matter, and thus agreed to "consider his
motion, for the time being, as part of a counterclaim addressing the Renton Property." (Dkt. # 4).

1 Under these circumstances, even if the Renton Property was the subject of this
2 action, the court would be without authority to enjoin its sale. The Anti-Injunction Act
3 (26 U.S.C. § 7421) prevents a court from enjoining a tax collection proceeding except
4 under narrow circumstances not applicable here.

5 The court therefore declines to enjoin the sale of the Renton Property. As the
6 court is now convinced that there is no manifest injustice in the planned sale of the
7 property, the court will not further consider any dispute over Renton Property unless it is
8 properly made part of this action, or is otherwise properly brought before the court.
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10 For these reasons, the court DENIES Defendant Elmore's motion for a TRO or
11 preliminary injunction (Dkt. # 2).

12 Dated this 18th day of May, 2005.

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16 JAMES L. ROBART
17 United States District Judge
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